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ACLU of Kansas Report Reveals Consequences of the Severe Underutilization of Diversion in Kansas

OVERLAND PARK, KS --- Today, following an exhaustive, multi-month investigation into diversion practices in all 105 counties in Kansas, **the ACLU of Kansas issued a report** detailing the severe underutilization of diversion by county prosecutors and the negative social and financial consequences underutilization has for Kansas families and communities. The report—*Choosing Incarceration: Kansas Prosecutors' Refusal to Use Diversion and the Cost to Communities*—was made possible by the ACLU Campaign for Smart Justice.

As the report reveals, county prosecutors in Kansas utilize diversion at an abysmally low average of 5% of felony cases, which is just half the national average. Further troubling, 23 counties in Kansas offer no felony diversions at all. This drastic underuse of diversion has severe consequences for the state: if Kansas prosecutors were to embrace diversion at the national average of 9%, the prison population would be reduced by 10% and government spending would be cut by \$8.9 million every year.

As the sole gatekeepers to diversion, elected county prosecutors determine how, when, and at what rate diversion is used in their respective counties. This prosecutorial discretion carries enormous—and unchecked—power, and, as our investigation revealed, too many Kansas prosecutors abuse that power to discourage, prohibit, refuse, and reject diversion in cases where it would be appropriate and beneficial to both the offender and the community.

Diversion is a program in which low-level, non-violent offenders are offered an alternative to prison, such as completing community service, paying restitution, or undergoing treatment for underlying behavioral or mental health issues.

Diversion programs benefit the community in innumerable ways: they prevent jails from becoming dangerously overcrowded, save millions in taxpayer spending every year, and connect Kansans, many with mental or behavioral health challenges, with the tools they need to avoid reoffending instead of strapping them with the lifelong consequences of a criminal record.

These well-documented benefits have earned diversion the support of prosecutors across the country and ideological spectrum, as well as an overwhelming number of constituents here in

Kansas. In a recent poll, 94% of Kansans expressed support for the increased use of diversion in their county.

Despite this overwhelming evidence and public support, most Kansas prosecutors continue to adamantly choose incarceration over safer, stronger communities, creating a number of complicated barriers that limit their constituents' access to diversion programs. Among them, are:

- A shocking inconsistency. Only three-fourths of Kansas counties have a formal diversion policy, despite the fact that all are mandated to by Kansas law.
- A web of unnecessarily harsh rules that needlessly make thousands of people ineligible for diversion programs
- Secrecy around diversion programs, with many eligible applicants unaware of the option's existence
- Exorbitant fines and fees for participation that can amount to thousands of dollars, making diversion programs inaccessible to many
- A near total lack of record management, making it difficult to assess and improve program efficiency. Out of the 105 counties in Kansas, only ten keep records of the diversion applications they receive. The remaining 95 keep no records of their diversion programs at all.

For more information on how the underuse of diversion is crippling the criminal justice system in Kansas, please see our full report [here](#).

The ACLU Campaign for Smart Justice — an unprecedented effort to reduce the U.S. jail and prison population by 50% and to combat racial disparities in the criminal justice system — has launched a new multi-year initiative to make sure that prosecutors who break the law are held accountable for fueling mass incarceration and racial disparities in the criminal justice system, through legislative advocacy, voter education, and litigation. This report is crucial in our work across the country towards much-needed [prosecutorial reform](#).

To see a detailed explanation of the diversion practices in every county, see our full report [here](#).